IN THE HIGH COURT OF JUDICATURE AT CALCUTTA

CIVIL APPELLATE JURISDICTION

ORIGINAL SIDE

RESERVED ON: 19.01.2024
DELIVERED ON:25.01.2024

CORAM:

THE HON'BLE MR. CHIEF JUSTICE T.S. SIVAGNANAM

AND

THE HON'BLE MR. JUSTICE HIRANMAY BHATTACHARYYA

APO NO. 187 OF 2023

IA NO. GA/1/2023

ARISING OUT OF

WPO NO. 1341 OF 2023

THE ANANDA BAG TEA COMPANY LIMITED

VERSUS

UNION OF INDIA AND OTHERS

Appearance:-
Mr. Pranit Bag, Adv.
Mr. Pradeep Jewrajka, Adv.
Ms. Pooja Jewrajka, Adv.

.....For the Appellant.

Mr. Aryak Dutt, Sr. Standing Counsel.

.....For the Respondent.

JUDGMENT

(Judgment of the Court was delivered by T.S. Sivagnanam, CJ.)

1. The unsuccessful writ petitioner is before us by way of this appeal challenging the order dated 26th July, 2023 by which the writ petition in WPO 1341 of 2023 was dismissed. The appellant had challenged the re-assessment order passed under Section 147 of the Income Tax Act, 1961 (the Act) dated 31st May, 2023 for the Assessment Year 2014-15. The learned Single Bench after noting the submissions made by the learned Advocate for the appellant/ writ petitioner and also taking note of the decision relied on in the case of ***Sabh Infrastructure Ltd. Versus Assistant Commissioner of Income Tax***[1], pointed out the distinguishing features in the said decision and ultimately held that a writ Court cannot act as an assessing officer or an appellate authority to scrutinize the facts and findings based on the evidence made by the assessing officer in the final assessment order which is an appealable order.

2. Mr. Pranit Bag, learned Advocate appearing for the appellant has elaborately referred to the factual details and has pointed out that error has crept in commencing from the stage of issuance of notice under Section 148A (b) of the Act and even thereafter, while passing the re-assessment order there has been violation of principle of natural justice in as much as the elaborate reply given by the assessee to the notice issued under Section 142(1) of the Act as well as the show-cause notice dated 29.05.2023 had not been considered

[1] (2018) 99 Taxmann.com 409 (Del)

and brushed aside in a single line. It is submitted that in the response to the show-cause notice, the assessee has requested for cross-examination of the parties whose statements were the basis for the reopening of the assessment, to provide the entire materials and report of the enquiry and also provide the copies of the reasons recorded before issue of notice under Section 148 dated 21.04.2021 that is before amendment made by the Finance Act, 2021. It is submitted that none of these were complied with by the assessing officer and the re-assessment has been completed by order dated 31.05.2023 in a cryptic manner and therefore, the same calls for interference. The learned Advocate has also referred to the assessment order passed under Section 143(3) of the Act dated 01.09.2016 and submitted that all the issues had been considered after the documents placed by the assessee were scrutinized by the assessing officer and there was no justification for reopening the assessment. In support of his contention the learned Advocate placed reliance on the decision in ***Sabh Infrastructure Ltd. (Supra)*** and the decision of this Court in ***Dinesh Kumar Goyal Versus Union of India & Ors.***[2] and ***Krishna Tissues Pvt. Ltd. Versus Union of India & Ors.***[3] dated 28.04.2023.

3. Mr. Aryak Dutt, learned Senior Standing Counsel appearing for the respondent department submitted that the learned Single Bench rightly dismissed the writ petition on the ground of availability of alternate remedy and the issues which are raised by the assessee in the writ petition as well as

[2] (2023) 453 ITR 535 (Cal)
[3] MAT 648 of 2023

in this appeal are all factual matters which can be agitated only before the appellate authority and a fact finding exercise will not be permitted by this Court in a writ proceedings.

4. We have elaborately heard the learned Advocates for the parties and carefully considered the materials placed on record. The appellant did not question the initiation of the reopening of the assessment by issue of notice under Section 148A (b) of the Act nor the appellant challenged the order passed under Section 148(d) of the Act. Therefore, at this distance of time, the appellant is precluded from questioning the correctness of the order passed under Section 148A (d) of the Act. After the said order, the re-assessment proceedings have commenced and notice under Section 148 has been issued. The assessee has participated in the proceedings, submitted their reply and the assessing officer has considered the reply and passed an order setting out certain reasons. To test the correctness of those reasons, facts have to be gone into much of which are being disputed by the appellant assessee. Therefore, the learned Single Bench was fully justified in holding that the re-assessment order being an appealable order, the same can be challenged before the appellate authority. That apart, whether the replies given by the assessee has been properly appreciated or not appreciated is also a ground which can be canvassed before the appellate authority. That apart, whether the appellant is entitled to seek cross-examination of certain third parties is also a ground which can be urged by the appellant before the appellate authority. Therefore,

the learned Single Bench was justified in relegating the appellant to avail the alternate remedy. The decision in ***Sabh Infrastructure Ltd.*** is factually distinguishable as the petitioner therein sought for quashing the notice issued under Section 148 of the Act. The Court on going through the factual position found that the primary facts have not been shown to be false and the five companies which were said to be shell companies were found to exist. Therefore, the said decision does not render assistance to the case of the appellant. The decision in ***Dinesh Kumar Goyal*** arose out of a challenge of an order passed under Section 148A (d) of the Act. On going through the facts, we find that the said decision cannot be applied to the appellant's case. Equally, the decision in ***Krishna Tissues*** also will not render any assistance to the case of the appellant since the said matter also arose out of a challenge to an order passed under Section 148A (d) of the Act. In the said case, the challenge to the said order was negatived on the ground that re-assessment order has already been passed. The Court examined the aspects and factually found that the assessing officer has committed certain fundamental errors which called for interference. Therefore, the decision cannot be applied to the facts of the present case.

5. For all the above reasons we find no ground to interfere with the order impugned. In result, the appeal is dismissed and the liberty reserved by the learned Single Bench observing that the dismissal of the writ petition will not be a bar on the part of the appellant/ writ petition to raise all the points in the

writ petition before the appellate authority if it intends to file an appeal against the re-assessment order. The liberty is preserved.

(T.S. SIVAGNANAM, CJ.)

I Agree

(HIRANMAY BHATTACHARYYA, J.)

(P.A.-PRAMITA)